

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JOHN PETTITT; MURPHY LABRADOR
CORPORATION; MAX GSD TRUST OF 1996 BY
BARBARA MUSSER, TRUSTEE,

Plaintiffs,

v.

JOHN CHIANG, individually and in his
capacity as STATE CONTROLLER OF THE
STATE OF CALIFORNIA,

Defendant.

No. C 07-5854 CW
ORDER GRANTING
DEFENDANT'S
MOTION TO DISMISS

Defendant John Chiang has filed a motion to dismiss the complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiffs John Pettitt, Murphy Labrador Corporation and Max GSD Trust of 1996 oppose the motion. The motion was submitted on the papers. Having considered all of the papers filed the parties, the Court grants Defendant's motion to dismiss.

BACKGROUND

The following facts are taken from the first amended complaint and assumed true for purposes of this motion.

1 Plaintiff Pettitt is the trustor of Plaintiff the Max GSD
2 Trust of 1996 (Trust). The Trust held, among other investments,
3 100,000 shares in Cybersource Corporation. Plaintiff Murphy
4 Labrador Corporation (MLC) is a holding company that operates to
5 hold investments for the benefit of the Trust. Plaintiffs allege
6 that Defendant violated their right to due process when, in 2004,
7 Defendant caused Cybersource Corporation to issue a duplicate stock
8 certificate representing the 100,000 shares held by the Trust for
9 Pettitt and thereby seized those shares pursuant to the Unclaimed
10 Property Law (UPL), Cal. Code Civ. P. §§ 1300 et seq.

11 Plaintiffs allege that they were not aware of the seizure
12 until April, 2006, when Pettitt was contacted by a company
13 offering, for a fee, to reclaim his shares from the State. On May
14 17, 2006, Pettitt filed a claim for the return of the shares. On
15 March 6, 2007, Defendant issued a check in the amount of \$663,000
16 to Plaintiffs and informed them that the shares had been sold on
17 December 17, 2004 at the price of \$6.63 per share. Plaintiffs
18 allege that the value of the shares increased from \$6.63 to \$12.00
19 between December 17, 2004 and March 6, 2007. Plaintiffs further
20 allege they "would not have liquidated the stock at any time prior
21 to the date hereof at any price." FAC ¶ 24.

22 Plaintiffs state a cause of action pursuant to 42 U.S.C.
23 § 1983, alleging that Defendant violated their right to due process
24 by infringing their "constitutionally protected property interest
25 [in the shares] without due process of law." FAC ¶ 42. Therefore,
26 Plaintiffs seek "restitution of their property and monetary
27 damages, in a manner commensurate with the injuries they have
28

1 suffered." FAC ¶ 45. In addition, Plaintiffs allege that
2 Defendant failed to comply with the requirements of the UPL by
3 failing to provide them with notice of the seizure and failing to
4 "[a]ssign a value to Plaintiffs' stock upon liquidating it that was
5 rationally related to the time and manner that Plaintiffs' stock
6 was or should have been sold." FAC ¶ 49(f). Therefore Plaintiffs
7 seek "restitution of their Property or the value thereof from the
8 Unclaimed Property Fund, or, alternatively, monetary Damages, in a
9 manner commensurate with the injuries they have suffered as a
10 result of Defendant's violations of the Unclaimed Property Law."
11 FAC ¶ 50.

12 LEGAL STANDARD

13 A complaint must contain a "short and plain statement of the
14 claim showing that the pleader is entitled to relief." Fed. R.
15 Civ. P. 8(a). When considering a motion to dismiss under Rule
16 12(b)(6) for failure to state a claim, dismissal is appropriate
17 only when the complaint does not give the defendant fair notice of
18 a legally cognizable claim and the grounds on which it rests. See
19 Bell Atl. Corp. v. Twombly, __ U.S. __, 127 S. Ct. 1955, 1964
20 (2007). In considering whether the complaint is sufficient to
21 state a claim, the court will take all material allegations as true
22 and construe them in the light most favorable to the plaintiff. NL
23 Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

24 When granting a motion to dismiss, the court is generally
25 required to grant the plaintiff leave to amend, even if no request
26 to amend the pleading was made, unless amendment would be futile.
27 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911

1 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment
2 would be futile, the court examines whether the complaint could be
3 amended to cure the defect requiring dismissal "without
4 contradicting any of the allegations of [the] original complaint."
5 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990).
6 An amended complaint cannot allege facts inconsistent with the
7 challenged pleading. Id. at 296-97.

8 DISCUSSION

9 Defendant argues that Plaintiffs' § 1983 claim is barred by
10 the Eleventh Amendment because they seek money damages against the
11 State. Plaintiffs counter that they "seek return of their own
12 property that has been held in trust by the Controller," and
13 therefore, under Taylor v. Westly, 402 F.3d 924 (9th Cir. 2005),
14 their claims are not subject to Eleventh Amendment immunity. In
15 Taylor, the Ninth Circuit held that the Eleventh Amendment does not
16 apply to funds seized under the UPL because those funds were not
17 "permanently escheated" and therefore were being held in trust by
18 the State. Id. at 931.

19 However, Plaintiffs overlook the fact that the State has paid
20 them the amount it received when it sold the shares.¹ Taylor
21 clearly provides that "the state's Eleventh Amendment immunity from
22 suit against it for damages payable from the treasury has no
23 application to escheated property and sales proceeds from escheated

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25 ¹The Controller is clearly authorized to make such a sale.
26 See Cal. Code Civ. P. § 1371 ("The Controller . . . may sell, cash,
27 redeem, exchange, or otherwise dispose of any securities . . . if,
28 in his or her opinion, that action on his or her part is necessary
or will tend to safeguard and conserve the interests of all
parties.").

1 property." Id. at 932. As the court in Suever v. Connell found,
2 nothing in the existing case law "supports plaintiffs' arguments
3 that they are entitled to more than the actual property the state
4 took into possession . . . or the proceeds of that property . . .
5 where it was non-cash property that was liquidated." 2008 WL
6 906423, *7 (N.D. Cal. 2008) (emphasis in original).

7 CONCLUSION

8 For the foregoing reasons, the Court GRANTS Defendant's motion
9 to dismiss.² Because amendment would be futile, the dismissal is
10 with prejudice. The Clerk shall enter judgment in favor of
11 Defendant and close the file. Each party shall bear its own costs.

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13 IT IS SO ORDERED.

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15 Dated: 4/22/08



16 CLAUDIA WILKEN
17 United States District Judge
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26 ²Because the Court finds that Plaintiffs' claims are barred by
27 the Eleventh Amendment, it need not reach Defendant's alternative
28 argument that the claims are time-barred.